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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/518,041	03/02/2000	Dean F Jerding		4646

5642 7590 02/11/2004

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EXAMINER

DEMICO, MATTHEW R

ART UNIT PAPER NUMBER

2611

DATE MAILED: 02/11/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/518,041

Applicant(s)

JERDING ET AL.

Examiner

Matthew R Demicco

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/2/03 has been entered.

Response to Amendment

2. This action is responsive to a Request for Continued Examination, filed 12/29/03. Claims 1-48 are pending. Claims 1-25 are amended.

Response to Arguments

3. Applicant's arguments filed with respect to Claims 1-48 have been fully considered but they are not persuasive.

Regarding Applicant's argument that the McFedries and LaJoie are inadequate and may not properly be combined, the Examiner points out that both the Windows Explorer of McFedries and the EPG of LaJoie are graphical user interfaces operable to run on computer-based systems. Both interfaces are designed for the display and management of information. Both enable the user to customize and view information in a way that makes the handling and manipulation of the information fastest and easiest for different given individuals. The nature of the information being manipulated does not

necessarily preclude the fact that certain aspects of each GUI may be functionally useful when combined together. Because both systems in essence are graphical user interfaces, combination of features based on obviousness is deemed proper.

4. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

5. In response to applicant's argument that there is no suggestion to combine the references and there is lack of suggested desirability of modification in the cited references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, McFedries teaches a graphical user interface that allows a user to select an initial content arrangement. As stated above, the graphical user interface is merely a tool for displaying and managing information. Similarly, the graphical user interface of LaJoie displays and manages

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information and provides various content arrangements selectable by the user. Since both inventions are fundamentally the same as demonstrated above, combination is proper. The simple fact that allowing a user to select a default initial layout saves the user from having to spend time configuring their GUI to their favorite display mode each time they turn it on or enter the EPG is sufficient motivation to combine the aforementioned teachings.

6. In response to applicant's argument that the teachings of McFedries and LaJoie are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both inventions teach computer-based graphical user interfaces as discussed above.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-18 and 25-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,850,218 to LaJoie et al. as cited by the Applicant in view of "The Complete Idiot's Guide to Windows 95, 2nd ed." By McFedries.

Regarding Claim 1, LaJoie discloses a television set-top terminal (Col. 9, Line 43) for enabling a user to navigate to an individual television service, the set-top box coupled to a programmable television services server device ("headend", Col. 9, Line 41). The set-top box has a memory for storing data (See Figure 3, "NVRAM, DRAM") and an interactive program guide contained in the memory for displaying program information received by the client device from the server (See Figure 20). LaJoie further discloses configuration information contained in the memory (Col. 13, Lines 39-44) that includes a plurality of initial guide arrangements. In each guide mode in the system of LaJoie, there is a default theme (Cols. 26-27, Lines 64-2) that is used until the user selects another from the list with a selection indicator that denotes the particular selected arrangement (See Figure 20). Further, the system of LaJoie has a processor (See Figure 3, "CPU") configured to cause the client device to display the program information according to the selected guide arrangement, wherein the processor is responsive to the interactive program guide, the configuration information, and the user input. What is not disclosed, however, is that the configuration information comprises a selection indication that denotes one of the guide arrangements as a selected initial guide arrangement. McFedries discloses an interactive graphical user interface wherein a user may select a content arrangement (Page 49, Figure 1). In the system of McFedries, a user may select a layout option that is saved and used as an initial arrangement the next time a given folder is viewed as is well known in the art. McFedries is evidence that ordinary workers in the art would recognize the benefits of storing in memory an initial arrangement in a graphical user interface. Therefore, it would have been obvious to one having ordinary skill in the

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art at the time the invention was made to modify the system of LaJoie with the selected initial guide arrangement configuration of McFedries in order to save the user from having to spend time configuring their GUI to their favorite display mode each time they turn it on or enter the EPG.

Regarding Claim 2, LaJoie in view of McFedries disclose a set-top terminal as stated above in Claim 1. LaJoie further discloses a device wherein the selected initial guide arrangement is configured in a time format including a centered and highlighted lowest channels of a plurality of channels in a channel portion of the selected initial guide arrangement and a listing by time of future programs in a main program display portion of the guide arrangement corresponding to the plurality of channels shown in the channel portion of the selected initial guide arrangement (See Figure 16). LaJoie demonstrates a guide arrangement configured in a time format (Figure 16, Element 386) where the lowest channel of a plurality of channels ("Channel 2") is highlighted and centered. The listing shows future programming as well as current programming.

Regarding Claim 3, LaJoie in view of McFedries disclose a set-top terminal as stated above in Claim 2. LaJoie further discloses a device wherein the processor is further responsive to a subsequent user input to display a guide arrangement in a current time format (See Figure 21) including a highlighted program on the current viewing channel ("Channel 2") of a plurality of channels in the channel portion of the guide arrangement and a listing by time of current and future programs in the main program display portion of the guide arrangement (Element 432) corresponding to the plurality of channels in the channel portion of the guide arrangement.

Regarding Claim 4, LaJoie in view of McFedries disclose a device as stated above in Claim 2. LaJoie further discloses a device wherein the processor is further responsive to a subsequent user input to display a subsequent guide arrangement in a user-configured time format including a highlighted program on a user pre-configured viewing channel of a plurality of channels in the channel portion of the guide arrangement and a listing by time of current and future programs in a main program display portion of the guide arrangement corresponding to the plurality of channels in the channel portion of the guide arrangement. This is accomplished by the user pressing the arrows on the remote control device and causing the guide to scroll up and down channels or back and forth across current and future programs in time-formatted guide arrangement (Col. 24, Lines 56-62).

Regarding Claim 5, LaJoie in view of McFedries disclose a device as stated above in Claim 2. LaJoie further discloses a device wherein the processor is responsive to a subsequent user input to display a guide arrangement with a menu of ordering formats selectable by a user overlaid on the channel portion of the guide arrangement (See Figures 20 and 22).

Regarding Claim 6, LaJoie in view of McFedries disclose a device as stated above in Claim 1. LaJoie further discloses a device wherein the selected initial guide arrangement is configured in a theme format displaying first alphabetical theme (See Figure 20) in a theme portion of the selected initial guide arrangement and a plurality of future programs in a main program display portion of the selected initial guide arrangement corresponding to the first alphabetical theme shown in the theme portion of the selected initial guide arrangement (See Figure 21).

Regarding Claim 7, LaJoie in view of McFedries disclose a device as stated above in Claim 6. LaJoie further discloses a device wherein the processor is further responsive to a subsequent user input (Col. 24, Lines 56-62) to display a subsequent guide arrangement in a current theme format including a highlighted (Col. 26, Lines 48-60) current viewing program for a current time slot centered in a main program display portion of the guide arrangement and a theme category corresponding to the current viewing program in a theme portion of the guide arrangement (See Figure 21).

Regarding Claim 8, LaJoie in view of McFedries disclose a device as stated above in Claim 6. LaJoie further discloses a device wherein the processor is responsive to a subsequent user input to display a new theme not corresponding to the current viewing program in the theme portion of the guide arrangement (Col. 26, Lines 48-64) and a plurality of future programs in the main program display portion of the guide arrangement corresponding to the new theme (Col. 27, Lines 8-32).

Regarding Claim 9, LaJoie in view of McFedries disclose a device as stated above in Claim 6. LaJoie further discloses a device wherein the processor is further responsive to a subsequent user input to display a subsequent guide arrangement in a user-configure theme format including a user pre-configured theme highlighted in a theme portion of the guide arrangement (Col. 27, Lines 8-32) and programs corresponding to the user pre-configured theme in the main program display portion of the guide arrangement (See Figure 21).

Regarding Claim 10, LaJoie in view of McFedries disclose a device as stated above in Claim 6. LaJoie further discloses a device wherein the processor is further

responsive to a subsequent user input to display a subsequent guide arrangement with a menu of ordering formats selectable by a user overlaid on the theme portion of the guide arrangement (See Figure 21).

Regarding Claim 11, LaJoie in view of McFedries disclose a device as stated above in Claim 1. LaJoie further discloses a device wherein the selected initial guide arrangement is configured in a title format displaying a first alphabetical category in a title portion of the selected initial guide arrangement (See Figure 22) and an alphabetical listing by time of a plurality of programs in a main program display portion of the selected initial guide arrangement corresponding to the alphabetical category (See Figure 22).

Regarding Claim 12, LaJoie in view of McFedries disclose a device as stated above in Claim 11. LaJoie further discloses a device wherein the processor is further responsive to a subsequent user input to display a subsequent guide arrangement in a current title format (Col. 28, Lines 5-26) including a highlighted current viewing program (See Figure 23) for a current time slot centered in the main program display portion of the guide arrangement and a title category in the title portion of the subsequent guide arrangement corresponding to the current viewing program.

Regarding Claim 13, LaJoie in view of McFedries disclose a device as stated above in Claim 11. LaJoie further discloses a device wherein the processor is responsive to a subsequent user input to display a new title category not corresponding to the current viewing program in the title portion of the guide arrangement (Col. 28, Lines 16-39) and

an alphabetical listing by time of a plurality of programs in the main program display portion of the guide arrangement corresponding to the new title category (See Figure 22).

Regarding Claim 14, LaJoie in view of McFedries disclose a device as stated above in Claim 11. LaJoie further discloses a device wherein the processor is further responsive to a subsequent user input to display a subsequent guide arrangement in a user-configure title format (Col. 28, Lines 16-38) including a user pre-configured title highlighted in the theme portion of the guide arrangement (See Figure 22) and programs corresponding to the user pre-configured title in the main program display portions of the guide arrangement (See Figure 23).

Regarding Claim 15, LaJoie in view of McFedries disclose a device as stated above in Claim 11. LaJoie further discloses a device wherein the processor is further responsive to a subsequent user input to display a subsequent guide arrangement with a menu of ordering formats selectable by a user overlaid on the title portion of the guide arrangement (See Figure 22).

Regarding Claim 16, LaJoie in view of McFedries disclose a device as stated above in Claim 1. LaJoie further discloses a device wherein the selected initial guide arrangement is configure in a browse-by menu format including a menu of ordering formats selectable by a user (See Figure 16, Elements 360, 362, and 364).

Regarding Claim 17, LaJoie in view of McFedries disclose a device as stated above in Claim 16. LaJoie further discloses a device wherein a default menu format is a browse-by time format including a listing of future programs in a main program display of the selected initial guide arrangement. In the invention of LaJoie, pressing the guide

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key causes the EPG to enter the browse-by time mode (Col. 25, Lines 63-66 and Figure 18). This reads on the default menu format being a browse-by time format because the user has not specified whether to browse by time, theme or title.

Regarding Claim 18, LaJoie in view of McFedries disclose a device as stated above in Claim 17. LaJoie further discloses a device wherein the processor is further responsive to a subsequent user input (Col. 24, Lines 52-62) to display a guide arrangement in a current time format selectable from the browse-by menu, the current time format including a highlighted current viewing channel of a plurality of channels in the channel portion of the subsequent guide arrangement (See Figure 16) and a listing by time of current and future programs in a main program display portion of the guide arrangement corresponding to the plurality of channels in the channel portion of the guide arrangement.

Regarding Claims 25-42, refer to Claims 1-18 as stated above.

9. Claims 19-24 and 43-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaJoie et al. in view of McFedries and further in view of U.S. Patent No. 5,808,608 to Young et al.

Regarding Claim 19, LaJoie in view of McFedries disclose a device as stated above in Claim 16. What is not disclosed, however, is a device wherein the default menu format is a browse-by theme format including a listing of future programs in a main program display of the selected initial guide arrangement. Young discloses a electronic program guide as shown in Figure 3 with the ability to sort based on categories and themes as shown in Figure 14. Young further discloses that the default program guide

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mode may be based on the theme criteria active when the guide was last exited (Col. 24, Lines 6-13). This reads on a default browse-by theme menu format including a listing of future programs in a main program display of the initial guide arrangement. Young is evidence that ordinary workers in the art would appreciate the ability to set a default mode based on a last-used mode of operation in an electronic program guide. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of LaJoie in view of McFedries with the default browse-by theme mode of Young in order to allow a user to return directly to a prior theme search.

Regarding Claim 20, LaJoie in view of McFedries and further in view of Young disclose a system as stated above in Claim 19. LaJoie further discloses a system wherein the processor is further responsive to a subsequent user input (Col. 24, Lines 56-62) to display a subsequent guide arrangement in a current theme format selectable from the browse-by menu, the current theme format including a current viewing program for a current time slot highlighted (Col. 26, Lines 48-60) in a main program display portion of the guide arrangement and a theme category corresponding to the current viewing program in a theme portion of the guide arrangement (See Figure 21).

Regarding Claim 21, LaJoie in view of McFedries and further in view of Young disclose a system as stated above in Claim 20. LaJoie further discloses a device wherein the processor is responsive to a subsequent user input to display a new theme not corresponding to the current viewing program in the theme portion of the guide arrangement (Col. 26, Lines 48-64) and a plurality of future programs in the main

program display portion of the guide arrangement corresponding to the new theme (Col. 27, Lines 8-32).

Regarding Claim 22, LaJoie in view of McFedries discloses a device as stated above in Claim 16. What is not disclosed, however, is a device wherein the default menu format is a browse-by title format including a listing of future programs in a main program display of the selected initial guide arrangement. Young discloses a electronic program guide as shown in Figure 3 with the ability to sort based on various user selections as shown in Figure 14. Young further discloses that the default program guide mode may be based on the selection criteria active when the guide was last exited (Col. 24, Lines 6-13). Young is evidence that ordinary workers in the art would appreciate the ability to set a default mode based on a last-used mode of operation in an electronic program guide. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of LaJoie in view of McFedries with the default browse-by selection mode of Young in order to allow a user to return directly to a prior browse-by title listing.

Regarding Claim 23, LaJoie in view of McFedries and further in view of Young disclose a system as stated above in Claim 22. LaJoie further discloses a system wherein the processor is further responsive to a subsequent user input to display a subsequent guide arrangement in a current title format (Col. 28, Lines 5-26) selectable from the browse-by menu including a highlighted current viewing program (See Figure 23) for a current time slot centered in the main program display portion of the guide arrangement

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and a title category in the title portion of the subsequent guide arrangement corresponding to the current viewing program.

Regarding Claim 24, LaJoie in view of McFedries and further in view of Young discloses a device as stated above in Claim 22. LaJoie further discloses a device wherein the processor is responsive to a subsequent user input to display a new title category not corresponding to the current viewing program in the title portion of the guide arrangement (Col. 28, Lines 16-39) and an alphabetical listing by time of a plurality of programs in the main program display portion of the guide arrangement corresponding to the new title category (See Figure 22).

Regarding Claims 43-48, refer to Claims 19-24 as stated above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew R Demicco whose telephone number is (703) 305-8155. The examiner can normally be reached on Mon-Fri, 9am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile can be reached on (703) 305-4380. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MRD

mrd
February 5, 2004


VIVEK SRIVASTAVA
PRIMARY EXAMINER